

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

RICARDO JOSE LOPEZ,

Petitioner,

vs.

E.K. McDANIEL, *et al.*,

Respondents.

3:11-cv-00635-LRH-VPC

ORDER

This is a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 in which petitioner, a state prisoner, is proceeding *pro se*. Petitioner has filed a motion to proceed *in forma pauperis*. (ECF No. 1.) Based on the information concerning petitioner's financial status, the court finds that the motion to proceed *in forma pauperis* should be denied. Petitioner must pay the full filing fee of \$5.00.

Petitioner moves the court for the appointment of counsel. (ECF No. 1-3.) There is no constitutional right to appointed counsel for a federal habeas corpus proceeding. *Pennsylvania v. Finley*, 481 U.S. 551, 555 (1987); *Bonin v. Vasquez*, 999 F.2d 425, 428 (9th Cir. 1993). The decision to appoint counsel is generally discretionary. *Chaney v. Lewis*, 801 F.2d 1191, 1196 (9th Cir. 1986), *cert. denied*, 481 U.S. 1023 (1987); *Bashor v. Risley*, 730 F.2d 1228, 1234 (9th Cir.), *cert. denied*, 469 U.S. 838 (1984). However, counsel must be appointed if the complexities of the case are such that denial of counsel would amount to a denial of due process, and where the petitioner is a person of such limited education as to be incapable of fairly presenting his claims. *See Chaney*, 801 F.2d at 1196; *see also Hawkins v. Bennett*, 423 F.2d 948 (8th Cir. 1970). In this case, it appears that the claims are somewhat

1 complex. Additionally, petitioner states that he is unable to read or write and is serving two consecutive
2 life sentences without the possibility of parole. Therefore, petitioner's motion for counsel shall be
3 granted.

4 Petitioner also moves for an evidentiary hearing. (ECF No. 1-2.) The court denies the motion
5 as premature at this time.

6 **IT IS THEREFORE ORDERED** that the clerk **DETACH** and **FILE** the petition, the motion
7 for an evidentiary hearing, and the motion for the appointment of counsel. (ECF Nos. 1-1, 1-2, 1-3.)

8 **IT IS FURTHER ORDERED** that petitioner's motion to proceed *in forma pauperis* (ECF No.
9 1) is **DENIED**. Petitioner shall have thirty (30) days from the date this order is **ENTERED** in which
10 to have the designated fee sent to the clerk.

11 **IT IS FURTHER ORDERED** that petitioner's motion for the appointment of counsel (ECF No.
12 1-3) is **GRANTED**. The Federal Public Defender for the District of Nevada (FPD) is appointed to
13 represent petitioner.

14 **IT IS FURTHER ORDERED** that petitioner's motion for an evidentiary hearing (ECF No. 1-2)
15 is **DENIED**.

16 **IT IS FURTHER ORDERED** that the clerk shall **ELECTRONICALLY SERVE** the FPD a
17 copy of this order, together with a copy of the petition for writ of habeas corpus (ECF No. 1-1). The
18 FPD shall have thirty (30) days from the date of entry of this order to file a notice of appearance or to
19 indicate to the court its inability to represent petitioner in these proceedings.

20 **IT IS FURTHER ORDERED** that, after counsel has appeared for petitioner in this case, the
21 court will issue a scheduling order, which will, among other things, set a deadline for the filing of a first
22 amended petition.

23 Dated this 5th day of October, 2011.



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26 LARRY R. HICKS
UNITED STATES DISTRICT JUDGE